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5	IN THE UNITED STA	TES DISTRICT CO	URT	
6	FOR THE DISTRICT OF ARIZONA			
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8	RACHEL EKLOFF, REBECCA)	No. CIV-O5-407-T	UC-RCC	
9	EKLOFF, and GRACE EKLOFF, minor) children by and through their mother)	CONSENT DECR	REE	
10	SARAH EKLOFF, RICHARD HARRIS,) a minor child by and through his father)			
11	STEVE HARRIS, CAITLAN HOEL, a) minor child by and through her mother) TRACY HOEL, KRISTINA)			
12	RICHARDSON, a minor child by and) through her mother, MARY HULL,)			
13	NICHOLAS IGRAS, a minor child by and) through his father LEON IGRAS, SARAH)			
14	EKLOFF, STEVE HARRIS, TRACY) HOEL, MARY HULL and LEON IGRAS,			
15	as individuals and representatives of a) class of persons similarly situated,			
16	Plaintiffs,			
17	vs.			
18				
19	ANTHONY D. RODGERS, Director of the Arizona Health Care Cost Containment)			
20	System, in his official capacity, and the ARIZONA HEALTH CARE COST			
21	CONTAINMENT SYSTEM) ADMINISTRATION,			
22	Defendants.			
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25	Plaintiffs filed the Complaint in this action on June 22, 2005 on their own			
26	behalf and on behalf of others similarly situated.	On November 22, 200	5, Plaintiffs' filed a Motion	
27	to Certify Class Action and a Motion for Sumn	nary Judgment. On De	ecember 5, 2005, the Court	
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granted the Motion to Certify Class Action. The court certified a class consisting of two subclasses. First, a class of persons under age twenty-one who are eligible for AHCCCS services and need incontinence briefs as a result of a disability. Second, a class of these children's parents who have purchased incontinence briefs at personal cost.

Defendants filed their Cross-Motion for Summary Judgment on January 23, 2006. On March 3, 2006, the Court granted the Plaintiffs' Motion for Summary Judgment, denied the Defendants' Cross-Motion for Summary Judgment, and entered a permanent injunction against the Defendants prohibiting them from denying Plaintiff children incontinence briefs for preventive purposes and ordering Defendants to reimburse Plaintiff parents for their out-of-pocket expenses for providing incontinence briefs to their Plaintiff children. The terms of this permanent injunction were clarified by the Court by its Order of April 17, 2006.

On March 26, 2006, Defendants filed an appeal to the United States Court of Appeals for the Ninth Circuit (No. 06-15580). The injunction was stayed for 60 days on April 17, 2006. On May 8, 2006, the parties were notified that the case was considered for inclusion in the Mediation Program of the U.S. Court of Appeals for the Ninth Circuit. The parties thereafter participated in several mediation sessions with a Circuit Mediator.

The parties have agreed to a proposed settlement of this case and on June 28, 2006, filed a Joint Motion to Substitute Terms of Injunction pending the Court's final approval of the settlement and notice to the class. The Joint Motion was approved by the Court on June 28, 2006 and the parties were ordered to file a Motion for Approval of Proposed Settlement of Class Action and Proposed Notice to Class Pursuant to Fed.R.Civ.P. Rule 23(e).

The Court, after reviewing the terms of the Consent Decree, the pleadings in this case, and any comments from class members, finds:

- 1. For the purposes of this Consent Decree, the class is defined as previously certified on December 5, 2006.
 - 2. This settlement is fair, reasonable, and adequate.
 - 3. This settlement requires AHCCCSA to provide coverage of incontinence briefs

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1	2.	Age Limit: Coverage for incontinence briefs is limited to members	
2		over age three (3) and under age twenty-one (21).	
3	3.	Number of Briefs per Month: The benefit is limited to 240 briefs per	
4		month, except in cases involving members who are diagnosed with	
5		chronic diarrhea and/or spastic bladder. In these cases, more than	
6		240 briefs shall be authorized when evidence of medical necessity is	
7		provided by the prescribing physician.	
8	4.	Prior Authorization: Prior authorization will be permitted to	
9		ascertain that:	
10		a. the member is over age three (3) and under age twenty-one	
11		(21);	
12		b. the member has a disability that causes incontinence of	
13		bladder and/or bowel;	
14		c. a physician has prescribed incontinence briefs as medically	
15		necessary; and	
16		d. the prescription is for 240 briefs or fewer per month, unless	
17		evidence of medical necessity for over 240 briefs is provided.	
18		e. A physician prescription supporting medical necessity may be	
19		required for specialty briefs (for instance, hypo-allergenic	
20		briefs) or for briefs different from the standard briefs supplied	
21		by the health plan.	
22	5.	Number of Prior Authorizations Per Year: AHCCCS health plans	
23		may require a new prior authorization to be issued every twelve (12)	
24		months. Prior authorization for a renewal of an existing prescription	
25		may be provided by the physician through telephone contact with the	
26		member, rather than an in-person physician visit.	
27	6.	Obtaining Supplies: Members will be required to obtain incontinence	
28		briefs from the in-network providers contracted with the health plans.	
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AHCCCS health plans and in-network providers will be required by contract to provide standard adequate types of briefs, including pullups.

- B. Failing to provide reimbursement for the out-of-pocket purchase of incontinence briefs under the following terms: Defendants' liability for reimbursement for purchases of incontinence briefs begins on June 25, 2005, when the Complaint in this action was filed in District Court, and ends the date that notice is provided to the class. Defendants shall reimburse members for out-of-pocket expenses for the purchase of briefs from the date of the denial or June 25, 2005, whichever is later, when the AHCCCS member can provide proof of the following:
 - 1. The AHCCCS member is over age three (3) and under age twenty-one (21) and has a disability that results in incontinence of bladder and/or bowel;
 - 2. The AHCCCS member had a prescription for briefs which was denied by the AHCCCS health plan;
 - The AHCCCS member purchased briefs at personal cost after the prescription was denied; and
 - 4. The AHCCCS member provides receipts for the purchases sought to be reimbursed.
- C. Failing to provide access to the following dispute resolution process: Any disputes regarding prior authorization will be addressed through the existing administrative appeal system (A.A.C. R9-34-101 *et seq.*). If an AHCCCS health plan denies a request for prior authorization, the health plan shall provide a notice in writing outlining (1) the specific reason for the denial, citing to the particular prior authorization criteria, in paragraph four above, that it believes are not met, and (2) the citation to the relevant policy or regulation supporting the denial.

1	5. To effectuate the above provisions, Defendants shall take the following actions:	
2	A. <u>Provider Notice</u> : Notice of the terms of this settlement agreement shall	
3	be provided to providers through the health plans/program contractors, via a notice on the AHCCCS	
4	website, and through Claims Clues within thirty (30) days of approval of this settlement agreement.	
5	B. <u>Policy And Rule Revision</u> : All AHCCCS policies and rules	
6	shall be modified to be consistent with the terms of this settlement agreement within nine (9) months	
7	of approval of this settlement agreement.	
8	ATTORNEYS FEES AND COSTS	
9	6. The parties agree that this settlement agreement shall not compromise the	
10	Plaintiffs' right to an award of fees and costs.	
11	COURT APPROVAL OF SETTLEMENT AND DISMISSAL	
12	7. The parties agree to submit this settlement agreement to the District Court	
13	pursuant to Fed.R.Civ.P. Rule 23(e). The parties agree that the briefing schedule in the United	
14	States Court of Appeals for the Ninth Circuit will be stayed pending this approval. Defendants agree	
15	to dismiss their appeal in the United States Court Appeals for the Ninth Circuit (No. 06-15580)	
16	pursuant to Fed.R.App.P. Rule 42 after the District Court approves this settlement.	
17	JURISDICTION AND ENFORCEMENT	
18	8. Once the District Court approves this settlement agreement, the case in the	
19	District Court (No. CIV05-407-TUC-RCC) will be dismissed with prejudice. However, the Court	
20	will reserve and retain jurisdiction to hear issues of alleged violations of the terms of this agreement	
21	pursuant to the following procedures:	
22	A. Individual disputes over any aspect of the issues raised in this case or this	
23	agreement will be heard through the AHCCCS grievance and appeal	
24	procedures followed, if necessary, by judicial review in Arizona state courts.	
25		
26	B. The Plaintiffs shall give Defendants written notice of any allegation of	
27	systemic violation of the terms of this agreement (i.e. recurring issues that	
28	have not been resolved by individual grievances and appeals), said notice to	
	6	

1		be in writing and in specific detail so that Defendants may investigate the
2		allegations being made.
3	C.	However, if Plaintiffs allege that Defendants have failed to adopt written
4		rules and policies to implement the terms of this settlement agreement within
5		nine (9) months of court approval, or have modified or violated the terms of
6		the settlement agreement by written rule or policy, Plaintiffs may seek relief
7		in District Court without exhausting the AHCCCS administrative grievance
8		and appeals process. Plaintiffs shall first give Defendants written notice of
9		the allegations before seeking relief from the District Court.
10	D.	Defendants shall have 60 days from receipt of notice of Plaintiffs'
11		allegations (pursuant to subparts b. or c. of this paragraph) to investigate and
12		cure the alleged issue. After 60 days, the Plaintiffs may seek further
13		intervention by the District Court if the issue remains unresolved.
14		
15		CHANGE IN LAW
		rovisions of this settlement agreement shall remain in effect unless there is
16	9. The p	Tovisions of this settlement agreement shall remain in effect unless there is
16 17	_	deral Medicaid statute or regulations that directly affects the coverage of
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17	a change in the fed incontinence briefs u	leral Medicaid statute or regulations that directly affects the coverage of
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1	Plaintiffs agree with Defendants' interpretation or that they disagree and will file a motion in court
2	to request judicial intervention or interpretation.
3	DATED this 17 th day of November, 2006.
4	DATED this 17 day of November, 2000.
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9	Ka Puel
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11	Raner C. Collins United States District Judge
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